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9 **UNITED STATES DISTRICT COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN JOSE DIVISION**

12 SECURITIES AND EXCHANGE
COMMISSION,

13 Plaintiff,

14 vs.

15 SMALL BUSINESS CAPITAL CORP.;
16 MARK FEATHERS; INVESTORS PRIME
FUND, LLC; and SBC PORTFOLIO FUND,
17 LLC,

18 Defendants.

Case No. 5:12-CV-03237-EJD

**PLAINTIFF SECURITIES AND
EXCHANGE COMMISSION'S
CONSOLIDATED RESPONSE TO THE
EIGHTH INTERIM FEE APPLICATIONS
OF RECEIVER (Dkt. No. 1019) AND
RECEIVER'S GENERAL COUNSEL (Dkt.
No. 1020)**

Date: June 18, 2015

Time: 9:00 a.m.

Place: Courtroom 4, 5th Floor
(Hon. Edward J. Davila)

1 Plaintiff Securities and Exchange Commission ("SEC") respectfully submits this response to
 2 the Eighth Interim Fee Applications of the Receiver Thomas A. Seaman (Dkt. No. 1019) and the
 3 Receiver's general counsel, Allen Matkins Leck Gamble Mallory & Natsis LLP ("Allen Matkins")
 4 (Dkt. No. 1020). The SEC supports the requests for a payment of interim fees. The requests are
 5 supported by time records and descriptions of work done which establish that the work was
 6 necessary to the administration of the estate and the interim fees are reasonable. The SEC reviewed
 7 the fee applications, compared them to the work performed and the charges incurred, discussed the
 8 fees and charges as necessary, and based upon its review, supports the request for an interim
 9 payment of fees in the amounts requested.

10 It is well established that the determination if and when to award fees and expenses to a
 11 court-appointed receiver and the professionals employed by the receiver are within the Court's
 12 sound discretion. *See Drilling & Exploration Corp. v. Webster*, 69 F.2d 416, 418 (9th Cir. 1934).
 13 An award of interim fees may be appropriate where a receiver or the professionals employed by the
 14 receiver "regularly devote[] a portion of his time, either daily or weekly, to the administration of the
 15 estate[.]" *See In Re McGann Mfg. Co.*, 188 F.2d 110, 112 (3d Cir. 1951) (interim fees to
 16 bankruptcy trustee or his counsel). *See also In re Alpha Telecom, Inc.*, No. CV 01-1283-PA, 2006
 17 WL 3085616, at *3 (D. Or. Oct. 27, 2006).

18 Thus, the SEC supports the payment of the interim fees requested by the Receiver and Allen
 19 Matkins. The SEC reserves the right to challenge the amounts requested in the final fee application.

20
 21 DATED: March 23, 2015

Respectfully submitted,

22
 23 /s/ John B. Bulgozdy

John B. Bulgozdy

Lynn M. Dean

Attorneys for Plaintiff

SECURITIES AND EXCHANGE COMMISSION

PROOF OF SERVICE

I am over the age of 18 years and not a party to this action. My business address is:

[X] U.S. SECURITIES AND EXCHANGE COMMISSION, 444 South Flower Street, Suite 900, Los Angeles, CA 90071.
Telephone No. (323) 965-3998; Facsimile No. (213) 443-1904.

On March 23, 2015 I caused to be served the document entitled **PLAINTIFF SECURITIES AND EXCHANGE COMMISSION'S CONSOLIDATED RESPONSE TO THE EIGHTH INTERIM FEE APPLICATIONS OF RECEIVER (Dkt. No. 1019) AND RECEIVER'S GENERAL COUNSEL (Dkt. No. 1020)** on all the parties to this action addressed as stated on the attached service list:

[X] **OFFICE MAIL:** By placing in sealed envelope(s), which I placed for collection and mailing today following ordinary business practices. I am readily familiar with this agency's practice for collection and processing of correspondence for mailing; such correspondence would be deposited with the U.S. Postal Service on the same day in the ordinary course of business.

[] **HAND DELIVERY:** I caused to be hand delivered each such envelope to the office of the addressee as stated on the attached service list.

[] **UNITED PARCEL SERVICE:** By placing in sealed envelope(s) designated by United Parcel Service ("UPS") with delivery fees paid or provided for, which I deposited in a facility regularly maintained by UPS or delivered to a UPS courier, at Los Angeles, California.

[X] **ELECTRONIC MAIL:** By transmitting the document by electronic mail to the electronic mail address as stated on the attached service list.

[X] **E-FILING:** By causing the document to be electronically filed via the Court's CM/ECF system, which effects electronic service on counsel who are registered with the CM/ECF system.

[] **FAX:** By transmitting the document by facsimile transmission. The transmission was reported as complete and without error.

I declare under penalty of perjury that the foregoing is true and correct.

Date: March 23, 2015

/s/ Javier Delgadillo
Javier Delgadillo

SEC v. SMALL BUSINESS CAPITAL CORP, et al.
United States District Court – Northern District of California
San Jose Division
Case No. 5:12-CV-03237-EJD
LA-4141

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